

Internal Revenue Service
memorandum

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to: Tom Burger, Director
Office for Employment Tax Administration and Compliance

from: Assistant Chief Counsel
Employee Benefits and Exempt Organizations CC:EBEO

subject: Employment Tax Status of Disabled Workers

During the past several years, the question of whether disabled individuals who participate in sheltered workshop programs and other training/work programs operated by rehabilitation facilities are employees has received a great deal of attention. This office has received a number of ruling requests over the past few years and we understand that a number of similar cases are pending in various districts throughout the country. In order to inform Service personnel of the position that the National Office is taking in its cases, we are providing the following information concerning the rulings issued by this office.

After careful and diligent consideration, the National Office has recently begun to respond to requests for private letter rulings and technical advice concerning the federal employment tax status of disabled individuals who perform services in sheltered workshop programs operated by rehabilitation facilities. Rulings recently issued by the National Office focus on a strict application of Revenue Ruling 65-165, 1965-1 C.B. 446 to the facts in each particular case.

Revenue Ruling 65-165 describes three situations involving blind individuals who performed services in sheltered workshop programs. The ruling holds that the blind individuals are not employees in two out of the three situations described because the control and direction exercised over them is for the purpose of rehabilitation and therapy and no employment relationship is intended. The ruling holds that the other group of individuals, with whom an employment relationship is intended and for whom the sheltered workshop organization provides working conditions, pay scales, and employee benefits comparable to those available in private industry, are employees.

The key in determining the status of disabled individuals is to determine whether the facts in a particular case most closely resemble the situation described in Class 1 (not employees) or Class 2 (employees) of Rev. Rul. 65-165. Class 3

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described in the revenue ruling concerns disabled individuals who are incapable of working in the workshop but who are capable of producing saleable articles at home. The National Office has not been asked to rule on this type of situation.

Recent rulings have concluded that short-term, finite duration evaluation or training programs, typically averaging several weeks to several months in length, that are intended to assess a disabled individual's needs, abilities and skills and/or to train the individual for placement in some type of work program within the rehabilitation facility or for competitive employment in the community, most closely resemble the situation described in Class 1 of the revenue ruling. In the revenue ruling, this period averaged 16 weeks in length. Accordingly, the rulings held that disabled individuals who participate in such programs are not employees.

The rulings further conclude that long-term, indefinite duration work programs, in which disabled individuals perform certain services for remuneration in a sheltered workshop program, most closely resemble the situation described in Class 2 of the revenue ruling. Disabled individuals typically remain in these types of work programs for many years either because they are incapable of working outside the protective environment of the sheltered workshop, because no suitable jobs are available in the community, or because the individual voluntarily chooses to remain in the sheltered workshop. Accordingly, the rulings held that disabled individuals who participate in such work programs are employees.

We hope this information is helpful to Service personnel. Please keep in mind that section 6110(j)(3) of the Internal Revenue Code provides that written determinations (i.e. private letter rulings, technical advice memorandum, or determination letters) may not be used or cited as precedent. Service personnel who are interested in obtaining additional information may contact the Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations) at (202) 622-6050.


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